

APPENDIX

Supreme Court, U. S.

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MICHAEL RODAK, JR., CLERK

Supreme Court of the United States

OCTOBER TERM, 1975

No. 74-6438

EWELL SCOTT, ETC.,

Petitioner

—v.—

KENTUCKY PAROLE BOARD, ET AL.,

Respondents

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR CERTIORARI FILED APRIL 29, 1975
CERTIORARI GRANTED DECEMBER 15, 1975

Supreme Court of the United States

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No. 74-6438

EWELL SCOTT, ETC.,

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—v.—

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
AT FRANKFORT

Civil Action No. _____

[Tendered Feb. 15, 1974]

[Filed July 26, 1974]

CALVIN BELL and EWELL SCOTT, Individually and on behalf of all other persons similarly situated, PLAINTIFFS

vs.

KENTUCKY PAROLE BOARD, LUCILLE ROBUCK, Chairman of the Kentucky Parole Board, CHARLES WILLIAMSON, NEWT MC CRAVEY, CARL OWSLEY, and GLEN WADE, Members of the Kentucky Parole Board, DEFENDANTS

COMPLAINT

The plaintiffs, for their complaint, allege as follows:

1. The jurisdiction of this Court arises under Title 28 U.S.C. §§ 1343(3)(4), 2201, 2202. This is a proceeding in equity pursuant to 42 U.S.C. § 1983 to redress the violation of rights guaranteed to the plaintiffs by the Constitution of the United States, in particular the due process clause of the Fourteenth Amendment thereto.

2. Plaintiff CALVIN BELL is a citizen of the United States and the Commonwealth of Kentucky, presently incarcerated in the Kentucky State Penitentiary under a sentence of life imprisonment. Plaintiff EWELL SCOTT is a citizen of the United States and the Commonwealth of Kentucky, presently incarcerated in the Kentucky State Penitentiary under a sentence of twelve years imprisonment.

3. Pursuant to FRCP 23, plaintiffs sue on behalf of themselves and on behalf of all persons similarly situated, to-wit, inmates incarcerated in prisons and other penal institutions in the state of Kentucky who presently or in

the future will be subject to the jurisdiction of the KENTUCKY PAROLE BOARD, and who have been, are presently, or in the future will be brought before the KENTUCKY PAROLE BOARD for a parole release proceeding. These persons constitute a class so numerous as to make it impracticable to bring them before this Court. There are common questions of law and of fact affecting the rights of such persons to due process of law, and common relief is sought. The claims of the plaintiffs are typical of the claims of the class. These defendants have acted and intend to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief with respect to the class as a whole. The plaintiffs will fairly and adequately represent the interests of the class.

4. Defendant KENTUCKY PAROLE BOARD is an independent agency of the state of Kentucky established pursuant to K.R.S. 439.320, and charged by law with the authority to release a prisoner on parole and to conduct hearings to determine whether parole should be granted. Defendant LUCILLE ROBUCK is the Chairman of the Kentucky Parole Board, and defendants CHARLES WILLIAMSON, NEWT MC CRAVEY, CARL OWSLEY and GLEN WADE are members of the Kentucky Parole Board.

5. Pursuant to the provisions of K.R.S. 439.330, 439.340, the Board has authority to release on parole all inmates confined in Kentucky prisons or other penal institutions who are eligible for parole. The Board is directed to adopt rules and regulations with respect to the eligibility of inmates for parole, such regulations to be "in accordance with prevailing ideas of correction and reform." To the best of plaintiffs' knowledge and belief, no such rules and regulations have been promulgated by the Board. Alternatively, if such rules and regulations have been promulgated, plaintiffs and the class they represent, to-wit, inmates incarcerated in prisons and other penal institutions in the state of Kentucky, have not been informed of the existence of such rules and regulations and are not aware of their contents.

6. Pursuant to the provisions described above, the Board is directed to study the case histories of persons eligible for parole, to conduct hearings on the desirability of granting parole and to obtain all pertinent information regarding each inmate eligible for parole. An interview of the inmate before one or more of the Board members is also required. The Board is further directed to adopt rules and regulations for the conduct of parole hearings. To the best of plaintiffs' knowledge and belief, no such rules and regulations have been promulgated by the Board. Alternatively, if such rules and regulations have been promulgated, plaintiffs and the class they represent, to-wit, inmates incarcerated in prisons and other penal institutions in the state of Kentucky, have not been informed of the existence of such rules and are not aware of their contents.

7. The Board and its members gather virtually no information about the inmates themselves. In studying the case histories of inmates eligible for parole, they rely entirely upon information contained in the file on the inmate, which is maintained by the prison or other penal institution in which the inmate is incarcerated or by the Kentucky Department of Corrections. They occasionally supplement this file with information that outside sources or third persons may choose to furnish them. There is no organized way in which information is excluded or included in the file, organized in the file, or tested for relevancy, accuracy, reliability, bias or prejudice. The information contained in the file is thus haphazardly gathered, arbitrary in the inclusion and exclusion of facts, and unscientific and irrational with respect to intelligent decisionmaking. The inmate has no access to his file, is not aware of its contents, has no knowledge of what material in the file is being considered by the Board in making its decision, and has no opportunity to rebut or explain adverse information in the file.

8. The inmate is notified in advance of the date of his interview with a member or members of the Parole Board. He is not notified of what issues or information the Board will be considering in making the decision on

his parole. In the absence of such knowledge he does not have a meaningful opportunity to prepare a presentation for consideration by the Board. At the interview before the Board, the inmate is permitted to speak and ask questions, but is not permitted to present evidence and arguments to justify his release. He is not permitted to challenge, cross-examine, or interpret the evidence that will be used by the Board in its decision to grant or deny parole. He is not permitted to be represented by counsel or by lay spokesmen or advocate, or in any manner whatsoever when his parole is being considered by the Board.

9. No record, transcript, or summary of the testimony and questions at the interview is prepared and maintained. The Board announces its decision orally, often at the conclusion of the interview, and generally with only minimal deliberation. Occasionally, oral reasons for the decision are given, but frequently no reasons at all are given. Written reasons are never given by the Board, and there is no statement of the factual basis for the decision, or of the rules, standards or criteria used in making the decision.

10. At no time, either before or after the decision, is an inmate advised by the Board as to what rules, standards or criteria will be used by the Board in determining whether to grant or deny parole, nor is he advised as to how he must conform his conduct, or as to what is expected of him, so that he may receive parole at a future date.

11. Plaintiff BELL was last given an interview before the Board in March, 1973. Consideration of his parole took place under the conditions described in paragraphs 5 through 10 herein. At that time he was given an eighteen month setback and was informed orally that the prosecuting attorney of the county in which his offense was committed did not want him to be released on parole. His request to see a copy of the prosecutor's letter was denied by the Board. Presumably, he will have another interview before the Board in September, 1974.

13. Plaintiff SCOTT was last given an interview be-

fore the Board in November, 1973. Consideration of his parole took place under the conditions described in paragraphs 5 through 10 herein. Most of the discussion at the interview concerned the facts surrounding his conviction. While in prison, he had enrolled in school and was participating in a group therapy program. He had not committed any disciplinary infraction. After very brief consideration by the Board, he was informed he should "have more time to get together" and was given a twenty-four month setback. Presumably, he will have another interview before the Board in November, 1975.

14. The practices and policies of the Kentucky Parole Board described herein deny to the plaintiffs and the class they represent due process of law as guaranteed by the Fourteenth Amendment to the Constitution of the United States in that they have brought about the continued deprivation of liberty of the plaintiffs and the members of the class without those procedural safeguards necessary to insure a fair and accurate determination of whether or not to grant parole. These practices and policies are violative of due process of law for the following reasons among others:

1. There is no adjudicatory-type hearing on the determination of whether to grant or to deny parole;
2. There is no opportunity for the inmate to be represented by an attorney, lay spokesman or advocate or other representative of the inmate's choosing;
3. There is no opportunity for the inmate to have access to the file that is considered by the Board or to rebut or explain adverse information in said file;
4. The inmate is not notified in advance of what issues or information the Board will be considering, and he is thus unable to prepare a proper presentation for consideration by the Board;
5. The inmate is not permitted to present evidence and arguments to justify his release on parole, nor to challenge, cross-examine or interpret the evidence

that will be used by the Board in its decision to grant or deny parole;

6. No record, transcript or summary of testimony and questions at the interview is prepared and maintained;

7. The Board does not state in writing the reasons for its decisions, and does not make a statement of the factual basis for the decision, or of the rules, standards or criteria used in making the decision.

15. Due process of law is further denied to the plaintiffs and the members of the class by the fact that the criteria, standards, norms or rules actually used by the Board in determining whether to grant or deny parole are unpublished and unarticulated and are applied in a wholly subjective, arbitrary and capricious manner. As a result of the failure of the defendants to articulate what rules, standards or criteria will be applied in the decision to grant or deny parole, plaintiffs and the members of the class do not know how they may conform their conduct to approved standards so that they may receive parole at a future date.

16. As a result of the actions described herein, the plaintiffs and the members of the class have suffered and will continue to suffer serious, immediate and irreparable injury to their constitutional rights and will continue to be incarcerated and deprived of their liberty without due process of law. The plaintiffs and the members of the class have no plain, speedy and adequate remedy at law, and the present suit is the only means of securing the relief requested.

WHEREFORE, Plaintiffs respectfully pray for the following relief:

1. That this Court advance this case on its docket, grant a hearing at the earliest practicable date and cause this case to be in every way expedited.
2. That this Court issue an Order pursuant to FRCP 23(c) (1) authorizing this action to be maintained as a class action.

3. That this Court issue a declaratory judgment to the effect that the practices and policies followed by the defendants in parole release proceedings, as described herein, are violative of the due process clause of the Fourteenth Amendment to the Constitution of the United States.

4. That a permanent injunction be issued against the defendants herein, their attorneys, agents, employees, servants, and successors in office, directing them to take the following action:

A. To promulgate rules for the conduct of parole release proceedings which shall provide for the following:

(1) an adjudicatory-type hearing on the determination of whether to grant or deny parole;

(2) The opportunity for the inmate to be represented at such hearing by an attorney, lay spokesman or advocate or other representative of the inmate's choosing;

(3) The opportunity for the inmate to have access to his file prior to the time that said file is considered by the Board and to rebut or explain adverse information in said file;

(4) Notification to the inmate in advance of the hearing as to what issues or information the Board will consider at the hearing;

(5) The opportunity for the inmate to present evidence and arguments to justify his release on parole and to challenge, cross-examine or interpret the evidence that will be used by the Board in making its decision to grant or deny parole;

(6) The preparation and maintenance of a transcript or summary of testimony and questions at the hearing;

(7) A statement in writing of reasons for the Board's decision to grant or deny parole and a statement of the factual basis for the decision and of

the rules, standards or criteria used in making the decision;

(8) Where parole is denied, a statement of what the inmate will be required to do in order to be eligible for parole in the future.

B. To promulgate and publish for distribution to the plaintiffs and members of the class the criteria, standards, norms or rules that will be used by the Board in determining whether to grant or deny parole.

5. That the plaintiffs be awarded any and all other relief to which they or the members of their class may appear to be entitled.

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
AT FRANKFORT

[Filed Feb. 15, 1974]

[Title Omitted in Printing]

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

The Plaintiffs, Calvin Bell and Ewell Scott, who are now held in the Kentucky State Penitentiary ask leave to file the attached Complaint without prepayment of fees and costs and to proceed In Forma Pauperis pursuant to 28 U.S.C. § 1915. The Plaintiffs' Affidavits in support of this motion are attached hereto.

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
AT FRANKFORT

[Title Omitted in Printing]

AFFIDAVIT IN SUPPORT OF MOTION FOR LEAVE
TO PROCEED IN FORMA PAUPERIS

Calvin Bell, being duly sworn deposes and says:

1. I am one of the Plaintiffs in the above entitled action.
2. I believe that I am entitled to bring this action in the United States District Court for the Eastern District of Kentucky.
3. The action seeks to enjoin the Defendants from depriving me and members of the class of prisoners to which I belong, of rights secured by the Fourteenth Amendment to the United States Constitution.
4. I believe I am entitled to the redress sought in this action.
5. I know the contents of the Complaint and believe them to be true to the best of my knowledge and belief.
6. I am without assets, and I have no income.
7. Because of my poverty I am unable to pay the costs of this action or give security therefor.
8. If I am not granted leave to prosecute this cause of action In Forma Pauperis I shall continue to suffer irreparable injury.

WHEREFORE, Plaintiff prays that he be granted leave to proceed In Forma Pauperis in this action, without being required to prepay costs or fees or give security therefor.

[Jurat Omitted in Printing]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
AT FRANKFORT

[Title Omitted in Printing]

AFFIDAVIT IN SUPPORT OF MOTION FOR LEAVE TO
PROCEED IN FORMA PAUPERIS

Ewell Scott, being duly sworn, deposes and says:

1. I am one of the Plaintiffs in the above entitled action.
2. I believe that I am entitled to bring this action in the United States District Court for the Eastern District of Kentucky.
3. The action seeks to enjoin the Defendants from depriving me and members of the class of prisoners to which I belong, of rights secured by the Fourteenth Amendment to the United States Constitution.
4. I believe I am entitled to the redress sought in this action.
5. I know the contents of the Complaint and believe them to be true to the best of my knowledge and belief.
6. I am without assets, and I have no income.
7. Because of my poverty I am unable to pay the costs of this action or give security therefor.
8. If I am not granted leave to prosecute this cause of action In Forma Pauperis, I shall continue to suffer irreparable injury.

WHEREFORE, Plaintiff prays that he be granted leave to proceed In Forma Pauperis in this action, without being required to prepay the costs or fees or give security therefor.

[Jurat Omitted in Printing]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
FRANKFORT

[Filed March 15, 1974]

CALVIN BELL, EWELL SCOTT, Individually and on behalf
of all other persons similarly situated, PLAINTIFFS

v.

KENTUCKY PAROLE BOARD, ET AL, DEFENDANTS

ORDER

It is ordered that the motion for leave to proceed in forma pauperis be and the same hereby is overruled and that the action be and the same hereby is dismissed. See Memorandum.

Mac Swinford, Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
FRANKFORT

[Filed March 15, 1974]

CALVIN BELL, EWELL SCOTT, Individually and on behalf
of all other persons similarly situated, PLAINTIFFS

v.

KENTUCKY PAROLE BOARD, ET AL, DEFENDANTS

MEMORANDUM

The plaintiffs seek to proceed in forma pauperis in this civil rights class action attacking procedural denials attendant to the operation of the Kentucky conditional release system. The tendered complaint alleges that the parole board utilizes unarticulated standards in defiance of state law, K.R.S. 439.340, and that the release hearings improperly deny (1) an adjudicatory proceeding; (2) representation by an attorney or lay counsel; (3) access to personal files in the possession of the board; (4) advance notification of the issues to be considered; (5) an opportunity to present evidence and cross-examine witnesses; (6) a transcript or summary of evidence; (7) findings of fact or statement of reasons for denial of parole. Analysis of these assertions reveals no deprivation cognizable by the federal courts.

The procedural dictates of the Due Process Clause are activated only upon the deprivation of a right or entitlement of constitutional magnitude. Although the loss of freedom resulting from revocation of parole merits due process applicability, *Gagnon v. Scarpelli*, 411 U.S. 778 (1973); *Morrissey v. Brewer*, 408 U.S. 471 (1972), the denial of parole wreaks no such "grievous loss", *Goldberg v. Kelly*, 397 U.S. 254, 263 (1970).

"(A) parole revocation proceeding differs from a review by a parole board to determine whether an inmate should be paroled initially. In the former

proceeding, the determination is whether the conditional freedom of the parolee should be terminated, because of an alleged violation of the conditions of his parole. In a review to decide whether parole should be granted, the determination is whether an inmate is a suitable prospect for return to society.

This Court is of the opinion that the Due Process Clause does not apply in procedures designed to determine suitability for parole."¹

While courts will on occasion intervene to correct abuses in the nation's parole system, *Morrissey v. Brewer*, supra, the nature of this "practical and troublesome area"² demands that the states be left free to develop correctional remedies unhampered by pervasive judicial interference in the mechanics of conditional release; the numerous factors involved in the assessment of an inmate's suitability for release demands a flexibility unattainable in a formal adjudicatory hearing. "The Authority . . . is and must be free to weigh all the tangible and intangible factors which determine whether a particular person is ready to return to society before his maximum term has been served."³ This consideration has led to judicial approval of parole hearings conducted without providing legal representation⁴; a transcript or

¹ *Bradford v. Weinstein*, E.D. N.C., 357 F. Supp. 1127, 1131 (1973). Accord, *Ganz v. Bensinger*, 7th Cir., 480 F.2d 88 (1973); *Menechino v. Oswald*, 2d Cir., 430 F.2d 403 (1970), cert. denied, 400 U.S. 1023 (1971); *Barradale v. United States Board of Paroles and Pardons*, M.D. Pa., 362 F. Supp. 338 (1973); *Ott v. Ciccone*, W.D. Mo., 326 F. Supp. 609 (1970).

² *McGinnis v. Royster*, 410 U.S. 263, 270 (1973).

³ *Dorado v. Kerr*, 9th Cir., 454 F.2d 892, 897 (1972), cert. denied, 409 U.S. 934 (1972); *Barradale v. United States Board of Paroles and Pardons*, supra note 1; *Ott v. Ciccone*, supra note 1.

⁴ *Ganz v. Bensinger*, supra note 1; *Dorado v. Kerr*, supra note 2; *Barnes v. United States*, 8th Cir., 445 F.2d 260 (1971); *Buchanan v. Clark*, 5th Cir., 446 F.2d 1379 (1971), cert. denied 404 U.S. 979 (1971); *Menechino v. Oswald*, supra note 1; *Schawartzberg v. United States Board of Parole*, 10th Cir., 339 F.2d 297 (1968).

summary of evidence⁵; access to prison files⁶; notice of issues⁷; the opportunity to present evidence and cross-examine adverse witnesses⁸; and reasons for denial of parole.⁹ Similarly, the failure to promulgate standards, while conceivably in derogation of state law, is not a concern redressable in this forum; "(i)f the rule were otherwise, every erroneous decision on state law matters would come before the federal court as a constitutional question."¹⁰

An order will be entered overruling the motion for leave to proceed in forma pauperis and dismissing the action.

March 15, 1974

Mac Swinford, Judge

⁵ Dorado v. Kerr, supra note 2; Menechino v. Oswald, supra note 1.

⁶ Dorado v. Kerr, supra note 2; Bradford v. Weinstein, supra note 1.

⁷ Menechino v. Oswald, supra note 1; Barradale v. United States Board of Pardons and Paroles, supra note 1; Ott v. Ciccono, supra note 1.

⁸ Tarlton v. Clark, 5th Cir., 441 F.2d 384 (1971), cert. denied 403 U.S. 934 (1971); Menechino v. Oswald, supra note 1.

⁹ Dorado v. Kerr, supra note 2; Mosley v. Ashby, 3d Cir., 459 F.2d 477 (1972); Menechino v. Oswald, supra note 1.

¹⁰ Sims v. Parke Davis & Co., E.D. Mich., 334 F. Supp. 774, 793 (1971), aff'd 6th Cir., 453 F.2d 1259 (1971), cert. denied 405 U.S. 978 (1972); Mosley v. Ashby, supra note 8; United States ex rel Campbell v. Pate, 7th Cir., 401 F.2d 55 (1968); Draper v. Rhay, 9th Cir., 315 F.2d 193 (1963); cert. denied 375 U.S. 915 (1963).

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
AT FRANKFORT

[Filed March 28, 1974]

[Title Omitted in Printing]

MOTION TO PROCEED ON APPEAL IN FORMA PAUPERIS

The Plaintiffs, Calvin Bell and Ewell Scott, who are now incarcerated in the Kentucky State Penitentiary, ask leave to proceed on appeal without being required to pre-pay fees, costs, or give security therefore and to proceed in forma pauperis pursuant to Fed. R. App. P. 24(a). In support of this motion, Plaintiffs attach hereto copies of the affidavits tendered with the Complaint in this action.

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
FRANKFORT

[Filed March 29, 1974]

CALVIN BELL, EWELL SCOTT, Individually and on behalf
of all other persons similarly situated, PLAINTIFFS

v.

KENTUCKY PAROLE BOARD, LUCILLE ROBUCK, Chairman
of the Kentucky Parole Board, CHARLES WILLIAMSON,
NEWT MCCRAVEY, CARL OWSLEY AND GLEN WADE,
Members of the Kentucky Parole Board, DEFENDANTS

ORDER

The defendants have filed a motion to proceed on
appeal in forma pauperis and tendered a Notice of
Appeal.

For the reasons set forth in this court's memorandum
of March 15, 1974, a copy of which is attached hereto
and made a part hereof, the plaintiffs are denied the
right to proceed on appeal in forma pauperis.

The undersigned judge certifies that the appeal is not
taken in good faith. 28 U.S.C. 1915(a).

Mac Swinford, Judge

March 29, 1974

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Docket No. _____

[Filed April 24, 1974]

CALVIN BELL, EWELL SCOTT, Individually and on behalf
of all other persons similarly situated,
PLAINTIFFS-APPELLANTS

vs.

KENTUCKY PAROLE BOARD, LUCILLE ROBUCK, Chairman
of the Kentucky Parole Board, CHARLES WILLIAMSON,
NEWT MCCRAVEY, CARL OWSLEY AND GLEN WADE,
Members of the Kentucky Parole Board, DEFENDANTS-
APPELLEES

MOTION TO PROCEED ON APPEAL IN FORMA PAUPERIS

The Appellants, Calvin Bell and Ewell Scott, who are
now incarcerated in the Kentucky State Penitentiary,
ask leave to proceed on appeal without being required
to prepay fees, costs, or give security therefore and to
proceed in forma pauperis pursuant to Fed. R. App. P.
24(a). In support of this motion, Plaintiffs attach hereto
copies of the affidavits tendered with the Complaint in
this action and a Brief in support of this Motion.

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UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 74-8081

[Filed July 25, 1974]

CALVIN BELL, ET AL., PLAINTIFFS-APPELLANTS

v.

KENTUCKY PAROLE BOARD, ET AL.,
DEFENDANTS-APPELLEES

ORDER

This cause is before the Court on the motion of the Plaintiffs-Appellants for leave to proceed on appeal in forma pauperis.

Upon consideration thereof, IT IS ORDERED that the motion be and it hereby is granted.

ENTERED BY ORDER OF THE COURT.

/s/ JOHN P. HEHMAN
Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 74-1899

[Filed Jan. 15, 1975]

CALVIN BELL and EWELL SCOTT, PLAINTIFFS-APPELLANTS

v.

KENTUCKY PAROLE BOARD, LUCILLE ROBUCK, Chairman of the Kentucky Parole Board, CHARLES WILLIAMSON, NEWT MCCRAVEY, CARL OWSLEY and GLEN WADE, Members of the Kentucky Parole Board, DEFENDANTS-APPELLEES

ORDER

Before: CELEBREZZE, MILLER and ENGEL, Circuit Judges

Plaintiffs Calvin Bell and Ewell Scott, both incarcerated in the Kentucky State Penitentiary and both having been denied parole release following hearings before the Kentucky Parole Board, filed this class action in the United States District Court for the Eastern District of Kentucky, seeking a determination that parole release procedures of the Kentucky Parole Board failed to conform to minimum guarantees under the due process clause of the Fourteenth Amendment to the United States Constitution. Their complaint sought as well the promulgation of detailed regulations to govern parole release hearings which would comport with their views of due process requirements. From a dismissal of their complaint by the district court, the plaintiffs appeal.

The case was submitted to the court upon the record and the briefs and oral arguments of counsel. Upon consideration thereof, it appearing that the complaint alleged no violation of rights guaranteed to the plaintiffs under the United States Constitution and that therefore the district court did not err in dismissing the complaint,

IT IS ORDERED that the judgment of the district court be and it is hereby affirmed.

ENTERED BY ORDER OF THE COURT

/s/ JOHN P. HEHMAN
Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 74-1899

[Filed April 2, 1975]

CALVIN BELL and EWELL SCOTT, PLAINTIFFS-APPELLANTS

v.

KENTUCKY PAROLE BOARD, LUCILLE ROBUCK, Chairman
of the Kentucky Parole Board, CHARLES WILLIAMSON,
NEWT MCCRAVEY, CARL OWSLEY and GLEN WADE,
Members of the Kentucky Parole Board, DEFENDANTS-
APPELLEES

ORDER

Before: CELEBREZZE, MILLER and ENGEL, Circuit
Judges

This cause came on for hearing on the petition for rehearing with a suggestion that it be reheard in banc.

It appearing to the court that no judge has requested that a vote be taken on said suggestion, the petition for rehearing was considered by the panel and was determined not to be well taken.

It is therefore ordered that the petition for rehearing be denied.

ENTERED BY ORDER OF THE COURT

/s/ JOHN P. HEHMAN
Clerk

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

No. 74-6438

EWELL SCOTT, ETC., PETITIONER

v.

KENTUCKY PAROLE BOARD, ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO the United States Court of Appeals for the Sixth Circuit.

ON CONSIDERATION of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted.

December 15, 1975